STATE OF NEW YORK

4835

2017-2018 Regular Sessions

IN SENATE

March 2, 2017

Introduced by Sen. AVELLA -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act and the social services law, in relation to contact by siblings in foster care, surrender, destitute child and permanency proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (b) of subdivision 2 of section 1081 of the family court act, as added by chapter 242 of the laws of 2016, is amended to read as follows:

(b) A child remanded or placed in the care of a social services official pursuant to this article **or article ten-A or ten-C of this act** shall have the right to move for visitation and contact with his or her siblings. The siblings of a child remanded or placed in the care of a social services official pursuant to this article **or article ten-A or ten-C of this act** shall have a right to petition the court for visitation and contact with such child. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the termination of parental rights or death of a parent.

§ 2. Paragraph (c) of subdivision 3 of section 1081 of the family court act, as added by chapter 242 of the laws of 2016, is amended to read as follows:

(c) A motion by a child remanded or placed in the care of a social services official pursuant to this article **or article ten-A or ten-C of this act** or a petition by a sibling of such child shall allege that visitation and contact would be in the best interests of both the child who has been remanded or placed and the child's sibling.

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in brackets [-] is old law to be omitted.

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§ 3. Paragraph (b) of subdivision 4 of section 1081 of the family court act, as added by chapter 242 of the laws of 2016, is amended to read as follows:

(b) A petition or motion filed under paragraph [~~(c)~~] **(b)** of subdivision [~~three~~] **two** of this section shall be served upon: (i) the respondent in the proceeding under this article **or article ten-A or ten-C of this act**; (ii) the local social services official having the care of the child; (iii) other persons having care, custody and control of the child, if any; (iv) the parents or other persons having care, custody and control of the sibling to be visited or with whom contact is sought; (v) any non-respondent parent in the proceeding under this article **or article ten-A or ten-C of this act**; (vi) such sibling himself or herself if ten years of age or older; and (vii) such sibling's attorney, if any. The petition or motion shall be served in such manner as the court may direct.

§ 4. Paragraphs (a) and (b) of subdivision 5 of section 1081 of the family court act, paragraph (a) as amended and paragraph (b) as added by chapter 242 of the laws of 2016, are amended to read as follows:

(a) Upon receipt of a petition filed under paragraphs (a) or (b) of subdivision [~~three~~] **two** of this section, the court shall, subject to the provisions of section one thousand eighty-two of this part, require that any order of a family court or order or judgment of the supreme court, or any agreement between the parents as described in subdivision one of this section, granting visitation rights to the non-custodial parent, grandparent or grandparents, be incorporated in any preliminary order or order of placement made under this article to the extent that such order, judgment or agreement confers visitation rights. In any case where a dispositional hearing has not been held or will not be held within thirty days of the filing of such petition the court shall order the person, official, agency or institution caring for the child pursuant to this article to comply with such part of the order, judgment or agreement granting visitation rights.

(b) Upon receipt of a petition or motion filed under paragraph (c) of subdivision three of this section, the court shall determine, after giving notice and an opportunity to be heard to persons served under subdivision four of this section, whether visitation and contact would be in the best interests of the child and his or her sibling. The court's determination may be included in the dispositional order issued pursuant to section one thousand fifty-two **or one thousand ninety-five** of this [~~article~~] **chapter or in a permanency hearing order issued pursuant to section one thousand eighty-nine of this chapter**.

§ 5. Clause (F) of subparagraph (viii) of paragraph 2 of subdivision (d) of section 1089 of the family court act, as amended by chapter 242 of the laws of 2016, is amended and a new clause (I) is added to read as follows:

(F) The court may make an order directing a local social services district or agency to undertake diligent efforts to encourage and strengthen the parental relationship when it finds such efforts will not be detrimental to the best interests of the child and there has been no prior court finding that such efforts are not required. Such efforts shall include encouraging and facilitating visitation with the child by the parent or other person legally responsible for the child's care. Such order may include a specific plan of action for the local social services district or agency including, but not limited to, requirements that such agency assist the parent or other person legally responsible for the child's care in obtaining adequate housing, employment, coun-

seling, medical care or psychiatric treatment. Such order shall also include encouraging and facilitating visitation with the child by the noncustodial parent and grandparents who have the right to visitation pursuant to section one thousand eighty-one of this act. Such order may also include encouraging and facilitating **regular** visitation **and communication** with the child by the child's siblings and may incorporate an order, if any, issued pursuant to **this section or** section one thousand twenty-seven-a or one thousand eighty-one of this act**, or pursuant to section three hundred fifty-eight-a of the social services law or section seventy-one of the domestic relations law**. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the **surrender,** termination of parental rights or death of a parent. Nothing in this subdivision shall be deemed to limit the authority of the court to make an order pursuant to section two hundred fifty-five of this act.

(I) If the court determines that the subject child has not been placed with his or her minor siblings or half-siblings who are in care, or that regular visitation and other forms of regular communication between the subject child and his or her minor siblings or half-siblings has not been provided or arranged for, the court may direct such official to provide or arrange for such placement or regular visitation and communication where the court finds that such placement or visitation and communication is in the child's and his or her siblings' or half-siblings' best interests. Placement or regular visitation and communication with siblings or half-siblings shall be presumptively in the child's and his or her siblings' or half-siblings' best interests unless such placement or visitation and communication would be contrary to the child's or his or her siblings' or half-siblings' health, safety or welfare, or the lack of geographic proximity precludes or prevents visitation. If a child placed in foster care pursuant to this section is not placed together or afforded regular communication with his or her siblings, the child, through his or her attorney or through a parent on his or her behalf, may move for an order regarding placement or communication. The motion shall be served upon: the parent or parents in the proceeding under this section; the local social services official having the care of the child; other persons having care, custody and control of the child, if any; the parents or other persons having care, custody and control of the siblings to be visited or with whom contact is sought; such sibling himself or herself if ten years of age or older; and such siblings' attorney, if any. Upon receipt of a motion filed under this paragraph the court shall determine, after giving notice and an opportunity to be heard to the persons served, whether visitation and contact would be in the best interests of the child and his or her siblings. The court may order that the child be placed together with or have regular communication with his or her siblings if the court determines it to be in the best interests of the child and his or her siblings. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the surrender, termination of parental rights or death of a parent.

§ 6. Paragraph 3 of subdivision (e) of section 1095 of the family court act, as amended by chapter 3 of the laws of 2012, is amended to read as follows:

(3) a direction that the child be placed together with or, at minimum, to visit and have regular communication with, his or her siblings, if any, unless contrary to the best interests of the child and/or the siblings **and may incorporate an order issued pursuant to part eight of**

article ten of this chapter in accordance with subdivision (f) of this section;

§ 7. Paragraph (b) of subdivision 11 of section 358-a of the social services law, as added by chapter 854 of the laws of 1990, is amended and two new paragraphs (c) and (d) are added to read as follows:

(b) If the court determines that the subject child has not been placed with his or her minor siblings or half-siblings who are in care, or that regular visitation and other forms of regular communication between the subject child and his or her minor siblings or half-siblings has not been provided or arranged for, the court may direct such official to provide or arrange for such placement or regular visitation and communication where the court finds that such placement or visitation and communication is in the child's and his or her siblings' or half-siblings' best interests. Placement or regular visitation and communication with siblings or half-siblings shall be presumptively in the child's and his or her siblings' or half-siblings' best interests unless such placement or visitation and communication would be contrary to the child's or his or her siblings' or half-siblings' health, safety or welfare, or the lack of geographic proximity precludes or prevents visitation.

(c) If a child placed in foster care pursuant to this section is not placed together or afforded regular communication with his or her siblings, the child, through his or her attorney or through a parent on his or her behalf, may move for an order regarding placement or communication. The motion shall be served upon: (i) the parent or parents in the proceeding under this section; (ii) the local social services official having the care of the child; (iii) other persons having care, custody and control of the child, if any; (iv) the parents or other persons having care, custody and control of the siblings to be visited or with whom contact is sought; (v) such sibling himself or herself if ten years of age or older; and (vi) such sibling's attorney, if any. Upon receipt of a motion filed under this paragraph the court shall determine, after giving notice and an opportunity to be heard to the persons served, whether visitation and contact would be in the best interests of the child and his or her siblings. The court may order that the child be placed together with or have regular communication with his or her siblings if the court determines it to be in the best interests of the child and his or her siblings.

(d) For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the surrender, termination of parental rights or death of a parent.

§ 8. Section 383-c of the social services law is amended by adding a new subdivision 11 to read as follows:

11. Acceptance of surrender. Acceptance of a judicial surrender or approval of an extra-judicial surrender pursuant to this section shall not be construed to terminate any rights of the child to contact his or her siblings. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the surrender, termination of parental rights or death of a parent.

§ 9. Section 384 of the social services law is amended by adding a new subdivision 9 to read as follows:

9. Acceptance of a judicial surrender or approval of an extra-judicial surrender pursuant to this section shall not be construed to terminate any rights of the child to contact his or her siblings. For purposes of this section, "siblings" shall include half-siblings and those who would

be deemed siblings or half siblings but for the surrender, termination of parental rights or death of a parent.

§ 10. This act shall take effect on the ninetieth day after it shall have become a law.